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No. 84-589

Office Supreme Court, U.S.
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**In the Supreme Court of the
United States**

October Term, 1984

PAUL EDMOND DOWLING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOINT APPENDIX

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I.

**DOCKET ENTRIES
UNITED STATES DISTRICT COURT FOR
THE
CENTRAL DISTRICT OF CALIFORNIA**

1.	11/30/82	3	Filed Indictment
2.	1/03/83	20	Arraignment Held (Counts 2-11, 12-20, 27-30; Defendant Appears)
3.	"	21	Defendant Enters Plea of Not Guilty (Counts 1, 2-11, 12-20, 27-30)
4.	1/25/83	29	Filed Superseding Indictment
5.	"	40	Filed Waiver of Statutory & Con- stitutional Rights to Speedy Trial
6.	3/22/83	73	Filed Superseding Indictment
7.	5/02/83	109	Filed Stipulations For Trial
8.	5/05/83	125	Trial Held-Bench (Counts 1, 2-11, 12-20, 27-30; Court Orders Trial Severed From The Trial Of Co- Defendants
9.	5/11/83	143	Court Finds Defendant Guilty As Charged in Counts 1-18, 25-27
		143	Court Judgment of Guilty (ss1- ss18, ss25-ss27)

II.

SECOND SUPERSEDING INDICTMENT

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 1982

Grand Jury

UNITED STATES OF
AMERICA,

Plaintiff,

v.

WILLIAM SAMUEL
THEAKER, aka Vic Colonna,
PAUL EDMOND DOWLING,
RICHARD MINOR,

Defendants.

) NO. CR 82-1005(B)-LTL
) SECOND SUPERSEDING
) INDICTMENT
) [18 U.S.C. §371: Con-
) spiracy; 18 U.S.C. §2314:
) Interstate Transportation
) of Stolen Property; 18
) U.S.C. §1341: Mail
) Fraud; 17 U.S.C. § § 106
) (1), (3) and 506(a): Copy-
) right Infringement]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 371]

At all times material herein:

1. Defendant WILLIAM SAMUEL THEAKER, also known as Vic Colonna, lived in Glendale, California;
2. Defendant PAUL EDMOND DOWLING lived in Ruxton and Towson, Maryland;
3. Aca "Ace" Anderson, an unindicted co-conspirator, lived in Pasadena, Maryland;

4. Beginning on or about January 1, 1979, or earlier, and continuing until at least February 1, 1982, within the Central District of California and elsewhere, defendants WILLIAM SAMUEL THEAKER, also known as Vic Colonna and PAUL EDMOND DOWLING and Aca "Ace" Anderson did knowingly and willfully conspire to commit offenses against the United States as follows:

- a. To knowingly and willfully transport in interstate commerce phonorecords containing Elvis Presley vocal performances of copy-righted musical compositions and, knowing that the phonorecords were stolen, converted and taken by fraud, in that they were manufactured and were intended to be distributed to the public by sale without the consent of the copyright proprietors, in violation of Title 18, United States Code, Section 2314;
- b. To knowingly and willfully, and for purposes of commercial advantage and private financial gain, manufacture and distribute to the public by sale phonorecords containing Elvis Presley vocal performances of copyrighted musical compositions and, without the consent of the copyright proprietors, in violation of Title 17, United States Code, Sections 106(1), 106(3) and 506(a).

5. The conspiracy was to be carried out in the following manner:

- a. Using material furnished by defendant DOWLING, Anderson, or THEAKER, THEAKER would manufacture phonorecords containing Elvis Presley vocal performances of copy-righted musical compositions without obtaining the consent of the copyright proprietors;

b. Defendant THEAKER would distribute catalogues advertising the phonorecords and would solicit orders from customers throughout the United States and other countries;

c. Defendant THEAKER would ship some of the orders and phonorecords to defendant DOWLING and Anderson in Maryland for distribution to THEAKER, DOWLING and Anderson's customers,

d. Defendant DOWLING and Anderson would fill the orders they received from THEAKER and distribute the phonorecords to the public by sale, without the consent of the copyright proprietors.

6. At all times material herein defendant RICHARD MINOR lived in Miami and Stuart, Florida.

7. Beginning on or about June 1, 1979, or earlier, and continuing until at least November 4, 1981, within the Central District of California and elsewhere, defendant RICHARD MINOR knowingly and willfully joined the conspiracy.

8. After joining the conspiracy, RICHARD MINOR received from THEAKER, DOWLING and Anderson, for distribution to the public by sale, phonorecords containing Elvis Presley vocal performances of copyrighted musical compositions, that had been manufactured without the consent of the copyright proprietors.

9. In addition, after joining the conspiracy, defendant RICHARD MINOR received from THEAKER, DOWLING and Anderson materials for manufacturing phonorecords containing Elvis Presley vocal performances of copyrighted musical compositions, which materials had been obtained and were intended to be used without the consent of the copyright proprietors.

10. To carry out the objects of the conspiracy, defendants THEAKER, DOWLING and MINOR committed various

overt acts in the Central District of California, including but not limited to the following:

a. On or about January 12, 1979, defendants THEAKER and DOWLING shipped approximately 500 cartons of phonorecords from "Paul Dowling", P.O. Box 4213 in Glendale, California to "Gloria Anderson", 817 Patapsco Avenue in Baltimore, Maryland;

b. On or about January 25, 1979, defendant THEAKER had a test pressing made of a phonorecord entitled "Behind Closed Doors";

c. On or about February 21, 1979, defendants THEAKER and DOWLING shipped approximately 115 cartons of phonorecords from "Paul Dowling", P.O. Box 4213 in Glendale, California to "Gloria Anderson", 817 Patapsco Avenue in Baltimore, Maryland;

d. On or about March 2, 1979, defendants THEAKER and DOWLING shipped approximately 211 cartons of phonorecords from "Paul Dowling", P.O. Box 4213 in Glendale, California to "Gloria Anderson", 817 Patapsco Avenue in Baltimore, Maryland;

e. On or about March 14, 1979, defendants THEAKER and DOWLING shipped approximately 250 cartons of phonorecords from "Paul Dowling", P.O. Box 4213 in Glendale, California to "Gloria Anderson", 817 Patapsco Avenue in Baltimore, Maryland;

f. On or about June 4, 1979 defendants THEAKER, DOWLING and MINOR shipped approximately 115 cartons of phonorecords from "Paul Dowling", P.O. Box 4213 Glendale, California to Richard Minor, 9415 S.W. 42nd Street, Miami, Florida.

g. On or about October 23, 1979, defendant THEAKER had test pressings manufactured of Elvis Presley phonorecords entitled "A Dog's Life" and "Plantation Rock".

h. On or about November 8, 1979, defendants THEAKER, DOWLING and MINOR shipped approximately 200 cartons of phonorecords from "Mr. Paperback", 234 North Brand Boulevard in Glendale, California to Richard Minor, 9415 S. W. 42nd Street, Miami, Florida;

i. On or about November 8, 1979, defendants THEAKER and DOWLING shipped approximately 187 cartons of phonorecords from "Mr. Paperback", 234 North Brand Boulevard in Glendale, California to "Gloria Anderson", 817 Patapsco Avenue in Baltimore, Maryland;

j. On or about January 29, 1980 defendant RICHARD MINOR sold the phonorecords "Behind Closed Doors," and "The Rockin' Rebel."

k. On or about August 29, 1980, defendants THEAKER and DOWLING sold the phonorecords "Behind Closed Doors" and "The '68 Comeback".

COUNTS TWO THROUGH SEVEN

[18 U.S.C. §2314]

11. The Grand Jury realleges all of the allegations contained in paragraphs 1 through 10 of the indictment.

12. On or about the dates listed below and to and from the locations hereinafter specified, defendants THEAKER and DOWLING knowingly and willfully caused to be transported in interstate commerce phonorecords of a value of more than \$5,000, containing Elvis Presley performances of copyrighted musical compositions, which

phonorecords, as the defendants then and there well knew, were stolen, converted and taken by fraud, in that they were manufactured without the consent of the copyright proprietors.

<u>COUNT</u>	<u>DATE OF SHIPMENT</u>	<u>FROM</u>	<u>TO</u>
TWO	Jan. 12, 1979	Los Angeles County, California	Baltimore, Maryland
THREE	Feb. 21, 1979	Los Angeles County, California	Baltimore, Maryland
FOUR	Mar. 2, 1979	Los Angeles County, California	Baltimore, Maryland
FIVE	Mar. 14, 1979	Los Angeles County, California	Baltimore, Maryland
SIX	Jun. 4, 1979	Los Angeles County, California	Baltimore, Maryland
SEVEN	Nov. 8, 1979	Los Angeles County, California	Baltimore, Maryland

COUNTS EIGHT THROUGH NINE

[18 U.S.C. §2314]

13. The Grand Jury realleges all of the allegations contained in paragraphs 1 through 10 of the indictment.

14. On or about the dates listed below and to and from the locations hereinafter specified, defendants THEAKER,

DOWLING and MINOR knowingly and willfully caused to be transported in interstate commerce phonorecords of a value of more than \$5,000, containing Elvis Presley performances of copyrighted musical compositions, which phonorecords, as the defendants then and there well knew, were stolen, converted and taken by fraud, in that they were manufactured without the consent of the copyright proprietors:

COUNT	DATE OF SHIPMENT	FROM	TO
EIGHT	Nov. 8, 1979	Los Angeles County, California	Miami, Florida
NINE	Jun. 4, 1979	Los Angeles County, California	Miami, Florida

COUNTS TEN THROUGH EIGHTEEN

[17 U.S.C. §506(a)]

15. The Grand Jury realleges all of the allegations contained in paragraphs 1 through 10 of the indictment.

16. On or about the following dates, within the Central District of California, defendants THEAKER and DOWLING, as set forth below, willfully and for purposes of commercial advantage and private financial gain infringed the copyrights of various copyright proprietors in and to various musical compositions and audiovisual works by distributing to the public by sale phonorecords containing performances of the musical compositions or copies of the soundtracks of the audiovisual works, without the consent of the copyright proprietors:

COUNT	DATE	MUSICAL COMPOSITION OR AUDIOVISUAL WORK	PHONORECORD	COPYRIGHT PROPRIETOR
10	8/29/80	Jailhouse Rock	Rockin' With Elvis New Year's Eve	Gladys Music Inc.
11	8/29/80	Big Boss Man	Elvis' Command Performance	Arc Music
12	8/29/80	Viva Las Vegas	Viva Las Vegas	Metro-Goldwyn-Mayer, Inc.
13	9/12/80	Can't Help Falling In Love	Behind Closed Doors	Gladys Music, Inc.
14	9/12/80	Burning Love	Leavin' It Up To You	Combine Music Corporation
15	9/12/80	Can't Help Falling in Love	Plantation Rock	Gladys Music, Inc.
16	8/29/80	My Way	A Dog's Life	Spanka Music
17	8/29/80	Heartbreak Hotel	The Burbank Sessions, Vol.II	Tree International
18	8/29/80	Loving You	The Rockin' Rebel Vol.III	Elvis Presley Music, Inc.

COUNTS NINETEEN THROUGH TWENTY-FOUR

[17 U.S.C. §506(a)]

17. The Grand Jury realleges all of the allegations contained in paragraphs 1 through 10 of the indictment.

18. On or about January 29, 1980, within the Central District of California, defendant RICHARD MINOR, as set forth below, willfully and for purposes of commercial advantage and private financial gain infringed the copyrights of various copyright proprietors in and to various musical compositions, by distributing to the public by sale phonorecords containing performances of the musical compositions without the consent of the copyright proprietors:

COUNT	MUSICAL COMPOSITION	PHONO- RECORD	COPYRIGHT PROPRIETOR
19	I Slipped, I Stumbled, I Fell	Behind Closed Doors	Gladys Music Inc.
20	Blue Moon of Kentucky	The Rockin' Rebel	Peer International
21	As Long As I Have You	The Rockin' Rebel	Gladys Music Inc.
22	Love Me Tender	The Rockin' Rebel, Vol. II	Elvis Presley Music Inc.
23	Tweedle Dee	The Rockin' Rebel, Vol. II	Chappell Music Company
24	Can't Help Falling In Love	Behind Closed Doors	Gladys Music Inc.

COUNTS TWENTY-FIVE THROUGH TWENTY-SEVEN

[18 U.S.C. §1341]

19. The Grand Jury realleges all of the allegations contained in paragraphs 1 through 10 of the indictment.

20. At all times material herein:

- a. Various companies, including Gladys Music Inc. and Elvis Presley Music Inc., were the proprietors of copyrights for musical compositions that had been performed by Elvis Presley;
- b. These copyright proprietors were entitled to receive royalties from persons who manufactured phonorecords containing Elvis Presley performances of the copyrighted musical compositions;
- c. RCA Records had the exclusive right to manufacture and distribute to the public by sale phonorecords embodying Elvis Presley performances; and
- d. The estate of Elvis Presley was entitled to receive royalties on the sale of phonorecords embodying certain Elvis Presley performances.

21. Beginning on or about January 1, 1979 and continuing until at least February 1, 1982, within the Central District of California and elsewhere, defendants THEAKER and DOWLING and Anderson knowingly and willfully devised and intended to devise a scheme to defraud Gladys Music, Inc. and other copyright proprietors, RCA Records and the estate of Elvis Presley by manufacturing and distributing to the public by sale phonorecords containing Elvis Presley vocal performances without obtaining their consent or making any payments to them.

22. The scheme to defraud was to be carried out in the following manner:

a. Using material furnished by DOWLING, Anderson, or THEAKER, THEAKER would manufacture phonorecords containing Elvis Presley vocal performances of copyrighted musical compositions without obtaining the consent of Gladys Music, Inc. and the other copyright proprietors, RCA Records or the estate of Elvis Presley;

b. Defendant THEAKER would distribute catalogs advertising the phonorecords and would solicit orders from customers throughout the United States and other countries;

c. Defendant THEAKER would ship most of the orders and phonorecords to DOWLING and Anderson in Maryland;

d. Defendant DOWLING and Anderson would fill the orders and distribute the phonorecords to the public by sale, without obtaining the consent of Gladys Music, Inc. and the other copyright proprietors, RCA Records or the estate of Elvis Presley and without making any royalty or other payments to them.

23. On or about the dates listed below, as part of said scheme to defraud, defendants THEAKER and DOWLING knowingly placed and caused to be placed the following items in a Post Office to be sent and delivered by the Postal Service and knowingly caused said items to be delivered by mail according to the directions thereon.

<u>COUNT</u>	<u>DATE</u>	<u>MAIL MATTER</u>	<u>POST OFFICE</u>
25	Jan. 30, 1979	Elvis Rarities Catalog and Flyers	Glendale, California
26	Jun. 14, 1979	Vic Colonna Catalog	Glendale, California

27 Dec. 31, 1980 Vic Colonna Glendale,
Catalog California

A TRUE BILL

Foreperson

STEPHEN S. TROTT
United States Attorney

III.

STIPULATED TESTIMONY (Title Omitted in Printing)**(A) STIPULATION REGARDING TESTIMONY
OF ACA "ACE" ANDERSON**

IT IS STIPULATED AND AGREED THAT Aca "ACE" Anderson was called as a witness by the government and testified as follows:

DOWLING AND THEAKER'S RECORD BUSINESS

1. Anderson lives in Pasadena, Maryland, a suburb of Baltimore. He has been an Elvis Presley collector and fan for several years.

2. In approximately January, 1977, Anderson received in the mail a Vic Colonna catalog advertising several Elvis Presley records. Anderson sent a letter to Vic Colonna at Colonna's post office box inquiring whether there was anyone in the Baltimore area who wanted to trade or buy Elvis Presley records. He received a reply from Colonna informing him that he should contact Paul Dowling at 6 Malvern Court, in Ruxton, Maryland.

3. After receiving Colonna's card, Anderson telephoned Dowling and introduced himself as an Elvis Presley fan. Dowling invited him to a Elvis Presley Fan Club party at his house.

4. During the course of the party, defendant Dowling told Anderson that he and Vic Colonna were partners and that they made and sold various bootleg Elvis Presley records, including "The '68 Comeback," "Elvis Presley Dorsey Shows," "Got A Lot of Livin' To Do," and "The Elvis TV Guide" album.

5. In approximately February, 1977, Dowling asked Anderson if Anderson and his wife, Drema, would be interested in stuffing envelopes with fliers advertising the records, in exchange for 10 percent of all the orders that

were filled with Anderson's help. Anderson agreed and began working for Dowling by stuffing envelopes that were marked with Vic Colonna's return address. In the following months, Anderson began spending more and more time with Dowling, until by 1978 and 1979, he was regularly helping Dowling by wrapping and mailing records, unloading record shipments and accompanying Dowling on various trips. Anderson continued working for Dowling until approximately February, 1982, following his conviction in Memphis, Tennessee, for selling bootleg Elvis Presley records and obstructing service of a search warrant.

6. In early 1977, shortly after Dowling and Anderson met, Dowling told Anderson that the first album he had pressed was the "TV Guide" album, and that he had later pressed the album entitled "The '68 Comeback." Dowling told Anderson that he had met William Samuel Theaker through a man named Paul Lichter and that Theaker and Dowling had become partners after Theaker told Dowling that Theaker could have records pressed more cheaply in Los Angeles than Dowling could on the East coast and that he (Theaker) could also obtain masters and covers. According to Dowling, Theaker told Dowling that with Dowling's knowledge of the Elvis world and Theaker's contacts with the music industry, Dowling and Theaker could become millionaires.

7. Based on Anderson's observations, his conversations with Dowling and listening to several of Dowling's telephone conversations with Theaker, Anderson learned that Dowling generally supplied the underlying musical material for the records (such as tape recordings) and also designed the covers and labels and wrote the liner notes. Theaker, on the other hand, was responsible for pressing the records, distributing catalogs and receiving orders.

8. After Elvis Presley's death in August, 1977, Dowling told Anderson that he had to fly to Los Angeles to help Theaker wrap records, because thousands of orders had come in and Theaker could not keep up with the demand. When Dowling returned, he told Anderson that while in Los Angeles, he had helped Theaker wrap and mail several of their records, including "Rockin' With Elvis, New Year's Eve," "The '68 Comeback," "The Legend Lives On," "Got A Lot of Livin' To Do," "Elvis Presley Dorsey Shows," "Command Performance," "From the Waist Up," and others. Dowling also told Anderson that for a period of between six and eight weeks, Theaker had received between 250 and 300 orders per day for the albums. According to Dowling, although he and Theaker had made enough money through these orders to live comfortably for the rest of their lives, he planned to continue making new albums.

9. According to Dowling, the "Rockin' With Elvis, New Year's Eve" album had initially been made from a tape that Dowling and Theaker had obtained from John Herman. Later pressings, however, were made from a better tape that Dowling had obtained from an individual named Don Lance. Plaintiff's Exhibit 398 is a 7½ ips reel to reel master tape of the Pittsburg New Year's Eve show. The box containing the tape shows that it was sent to Paul Dowling by Don Lance. According to Dowling, if the "Rockin' With Elvis, New Year's Eve" album had been legitimate, it would have been awarded a Gold Record for the number of records sold.

10. Shortly after Anderson met Dowling in January, 1977, Dowling told him that he had learned that RCA's contract with Elvis Presley was exclusive and that only RCA was authorized to produce records of Elvis Presley's singing. However, Dowling told Anderson that in a lawsuit, Buddah Records had established that everyone

had the right to press records containing Elvis Presley's public interviews. Dowling further told Anderson in 1977 that he wished he and Theaker could put the records out legally because Dowling wanted to advertise in national publications such as *TV Guide*, *The Star*, and various magazines devoted to Elvis Presley.

11. In early 1979, Dowling told Anderson that because Theaker was being investigated by the FBI in Los Angeles, Theaker would be shipping most of the records to Dowling for distribution. Dowling asked Anderson if it would be alright to store the records at Anderson's mother's house. Anderson agreed, but after the first shipment arrived, he realized that there were too many records to store in the house. Accordingly, even though the bills of lading for all of the later truck shipments (by Yellow Freight and McClain) stated that the shipments were being made to "Gloria Anderson," Anderson and Dowling took delivery of the records at the trucking terminals and then stored them in garages Anderson had rented.

12. Plaintiff's Exhibits 93 through 96, and 100 are bills of lading and delivery slips for record shipments that Ace Anderson signed for at the Yellow Freight terminal in Baltimore. With the exception of Exhibit 93, (for the January 12, 1979 shipment), all of the bills of lading accurately identify which albums were shipped by listing album names or matrix numbers and the number of copies or cartons which were included in the shipment. For single record titles, such as "Command Performance" there were generally 50 records per carton. For double record albums, such as "The Burbank Session", there were 25.

13. A number of the cartons on the January 12, 1979, shipment (Plaintiff's Exhibit 93), arrived damaged. Anderson submitted a claim for the damaged items and, in the course

of preparing the claim, submitted to the Yellow Freight trucking company, two invoices (Plaintiff's Exhibits 238 and 239), which Paul Dowling had prepared and which listed the albums that were included in the shipment.

14. Plaintiff's Exhibit 102 contains bills of lading for two record shipments, one on November 8, 1979, and one on November 9, 1979, that Theaker made through McLean Trucking Company. The November 8, 1979, bill of lading accurately identified the albums that were being shipped by matrix number and accurately listed how many of each record were being shipped.

15. In 1979, after Theaker began shipping most of the albums to Dowling and Anderson for distribution, he also began sending them packages containing the various catalog orders that customers sent in to him and the customers' letters. Anderson helped fill the orders by wrapping the records and mailing them. Following Dowling's instructions, Anderson mailed some of the records from post offices outside of Maryland, such as one in Alexandria, Virginia.

16. During the same time period, Theaker regularly sent Dowling envelopes of cash, which according to Dowling, represented Dowling's share of the sales. One envelope Anderson saw had approximately \$20,000 in it. In addition, Theaker sent Dowling credit card slips and checks from customers in foreign countries.

17. From approximately April 29 through July 29, 1979, Dowling allowed Anderson to use Anderson's bank account for processing the foreign checks. Anderson deposited the checks and gave the proceeds to Dowling when they cleared. He kept the interest on the checks for himself. Plaintiff's Exhibit 174 is the savings account passbook for the account (at the Merritt Savings and Loan in Baltimore) Anderson used to deposit the foreign checks.

18. Dowling and Theaker used four business names and employed different mailing lists for each. The bulk of the business was done under the name "Vic Colonna." However, Theaker and Dowling also sold records under the names "Golden Archives," "King's Treasurers" and "Elvis Rarities." Dowling told Anderson that they used the different business names so that they could charge different prices for the same albums (depending upon the customer list), and also in order to confuse the FBI.

ANDERSON AND DOWLING'S TRIP TO LOS ANGELES

1. On July 10, 1979, Dowling, Anderson and Anderson's wife came to Los Angeles in order to meet with Theaker and his attorney. Because Dowling and Theaker didn't want anyone to know they were meeting, Dowling and Anderson flew under assumed names. When Dowling, Theaker and Anderson met with Theaker's attorney, Martin Bernstein, they discussed whether they should continue pressing the records and possible defenses to a criminal prosecution. Dowling and Theaker said they would continue pressing the records and agreed that if they were prosecuted they might claim that after Presley's death, they believed anyone could press his records. During this visit to Los Angeles, Anderson accompanied Theaker to the Glendale Post Office, where Theaker picked up mail order correspondence, including orders and cash. During the same visit, Anderson and Dowling visited Theaker at his Glendale house. After seeing master tapes for some of their albums in Theaker's living room, Dowling told Anderson that Theaker was crazy to leave the tapes lying around, because the FBI might find them in a search.

2. Theaker and Dowling have both told Anderson that they were wary of any unusually large record orders, because they could be charged with an interstate transpor-

tation of stolen property if they shipped more than \$5,000 worth of records.

RICHARD MINOR

1. Dowling told Anderson that Richard Minor was a record dealer in Florida who manufactured counterfeit Elvis Presley 45's on the Sun label, which he sold and traded to Theaker and Dowling in exchange for Dowling and Theaker's Elvis Presley albums. (The Sun 45's advertised in the various Vic Colonna catalogs came from Richard Minor.) Frequently, when Dowling's supply of his and Theaker's albums was running low, he would arrange with Richard Minor to repurchase albums that Theaker had previously sent Minor.

2. Plaintiff's Exhibit 705 is an example of a carton that was shipped originally by Theaker to Minor and then by Minor to Dowling. The carton originally contained 50 copies of the Dowling/Theaker album, "Command Performance."

3. Dowling told Anderson of three additional deals involving bootleg Elvis Presley albums that Theaker and Dowling had made with Minor. The first of these deals involved what Dowling and Anderson referred to as the "junk LPs." During 1978, Dowling and Theaker copied approximately 50 bootleg Elvis Presley records that had been released by other individuals. The records had the same covers as the original bootlegs, but were not shrink wrapped and had only two-tone covers — either black and white or a color tint. Dowling and Theaker advertised the albums on a flier and told their major dealers that the records would be available only once and had to be ordered in advance. (Plaintiff's Exhibit 211 is one of the junk LP fliers.) After they sold the records, however, Dowling and Theaker sold the stampers and other materials for manufacturing the records to Richard Minor. According to Dowling, Minor re-pressed the records and began listing them in his own advertisements.

4. Plaintiff's Exhibit 211, the flier advertising the "junk LPs" referred to the albums as "imports" which Vic Colonna had "at last managed to assemble."

5. The second deal with Minor involved the albums "Rockin' Rebel, Volume II," "A Dog's Life," "Leavin' It Up To You," and "Plantation Rock." According to Dowling, in mid-1979, Dowling and Theaker told Minor that they were planning on releasing four new albums. In exchange for receiving approximately half of the initial pressing (5,000 of each of the four records), Minor agreed to invest \$40,000 in the project. Although Dowling and Theaker led Minor to believe that Minor's \$40,000 was half of the total needed, in fact Minor's investment paid Theaker and Dowling's total manufacturing costs.

6. The third major transaction with Minor that Anderson learned of from Dowling involved the records "The '68 Comeback, Volume II," "That's The Way It Is," "Elvis on Tour," and "The Aloha Rehearsal Show." According to Dowling, in early 1980, Horace Waddell was unwilling to press any more records for Theaker, and, accordingly, it was necessary for Theaker and Dowling to find a new presser they could rely on. After losing Waddell, Theaker had had the four albums pressed somewhere else in Los Angeles. The results, however, were unsatisfactory. Accordingly, Theaker and Dowling shipped the mothers and labels to Richard Minor so that the records could be pressed and collated in album covers in Florida. During a conference call, Anderson heard Dowling tell Minor that Theaker was sending Minor these materials. Minor replied that it was "all set."

[The testimony of Ace Anderson on Cross Examination Appears in the Record of Transcript At Pages 75-86]

**(B) STIPULATION REGARDING TESTIMONY
OF JOAN DEARY**

IT IS STIPULATED AND AGREED that Joan Dreary was called as a witness by the government and testified as follows:

Dreary has worked for RCA Records ("RCA") since 1955, the same year Elvis Presley signed an exclusive recording contract with RCA. She worked initially as a secretary to the Presley producer, Steve Sholes. In 1964, Dreary became directly involved in the production of RCA's Presley records and in 1967, she became a producer. During the years 1977-1981, Dreary worked full-time cataloging RCA's Presley tapes and producing Presley records including "Elvis Aron Presley" - 8 Record 25th Anniversary set released in 1980.

Dreary has produced over 40 RCA Elvis Presley albums and is the recognized RCA Presley archivist. She is currently RCA's Director, Artis & Repertoire Administration for the West Coast.

Dreary is familiar with RCA's collection of Elvis Presley master tapes, which include tapes recorded in RCA's studios, Radio Recorders and other outside studios at which Presley was recorded for record albums, television and motion pictures as well as various live concerts and purchased masters. These tapes are maintained in vaults and RCA never authorized release of them. As a producer and archivist, she is familiar with the distinctive sounds of Presley recordings made from audiences, from direct feeds from Elvis' microphone in various concert halls and studios, as well as the distinctive sounds of reference acetates.

Dreary has examined and listened to each of the albums listed in the stipulation regarding the testimony of Aca "Ace" Anderson and has determined that the albums were based on the following source material:

RCA owned master tapes, NBC Television tapes, movie studio master tapes (including tapes originally recorded at Radio Recorders Studios in Hollywood), audience recordings, tapes or film of television shows, and reference acetates or lacquers. Specifically, Dreary determined the attached facts about each of the albums. [The attached descriptions, the package and source of musical content for each album are not represented in this appendix; they appear as pages 27-47 of the stipulated testimony which is included in the excerpt of record filed in the Court of Appeals].

Most of the albums identify performance date and place of recording and in many instances, the "take" number. With the exception of "Rockin Rebel II" (GA 300) all of the music on the albums was recorded after SUN and RCA acquired the exclusive right to manufacture and distribute Elvis Presley sound recordings.

Dreary has listened to the tape marked Plaintiff's Exhibit 173 ("RCA stolen tapes"). The tape contains several songs that appear on "The Legend Lives On" album (Plaintiff's Exhibit 221), as well as additional songs. The original source for the tape was an eight track RCA master-tape recorded in Las Vegas and RCA 16-track tapes. No one in RCA was authorized to release the tapes.

[The testimony of Joan Dreary on cross-examination is set forth in the Record of Transcript at pages 35-75].

**(C) STIPULATION REGARDING TESTIMONY
OF WILBUR E. GARRETT**

IT IS STIPULATED AND AGREED that Wilbur E. Garrett was called as a witness by the government and testified as follows:

1. Wilbur E. Garrett is a Special Agent with the FBI assigned to the Baltimore, Maryland, office. As such, he has been responsible for investigation on the East coast of Paul Dowling and William Samuel Theaker's involvement in bootleg Elvis Presley records.

2. On February 27, 1980, Special Agent Garrett and another FBI special agent, J.R. Nicewarner, met with Paul Dowling at his residence, 817 Trafalger Avenue in Towson, Maryland. During the course of a brief conversation, Dowling asked Special Agent Garrett what the investigation concerned, and Special Agent Garrett replied that he was the subject of a criminal copyright investigation regarding the manufacture and distribution of bootleg Elvis Presley record albums containing copyrighted musical compositions.

3. Special Agent Garrett has examined the Yellow Freight and Mc Clain Trucking bills of lading, (Plaintiff's Exhibits 93-100 and 102-103), the invoices submitted in behalf of Ace Anderson's damaged freight claim (Plaintiff's Exhibits 238 and 239), the stipulations regarding copyrights and songs on albums, testimony of Jim Profetta, testimony of Louis Roderick, testimony of Ace Anderson, the Vic Colonna catalogs (Plaintiff's Exhibits 59, 87 and 89) and the albums themselves.

By determining from the bills of lading and damage-claim invoices how many of each album were shipped and multiplying that number by the albums' catalog list prices, Garrett derived "whole" shipment values which are set forth in chart form below by the indictment counts.

Garrett also determined what fraction of each album (by band) is made up of performances of copyrighted musical compositions. He multiplied these fractions by the number of albums shipped and the catalog prices to determine "fractional" shipment values. The fractional values are also set forth in the chart.¹

Shipment Date & Description	Bill of Lading Exhibit No.	Whole Shipment Value	Fractional Shipment Value	Indictment Count
1/12/79 Dowling to Anderson	93	\$156,960	\$92,204	Two
2/21/79 Dowling to Anderson	94	\$ 40,169	\$18,076	Three
3/2/79 Dowling to Anderson	95	\$ 63,801	\$47,161	Four
3/14/79 Dowling to Anderson	96	\$ 77,940	\$62,352	Five
6/4/79 Dowling to Anderson	98	\$ 47,682	\$31,246	Six
11/8/79 Mr. Paperback to Anderson	102	\$ 93,372	\$70,976	Seven

¹ The calculations do not include the following songs: "An American Trilogy", "Fever", "Get Back", "Good Rockin' Tonight", "Guitar Man", "Hawaiian Wedding Song", "Hey Jude", "I'm So Lonesome I Could Cry", "It's Impossible", "It's Over", "Spanish Eyes", "Suspicious Minds", "The First Time Ever I Saw Your Face" and "Yesterday".

A26

11/8/79 99 \$ 99,800 \$75,848 Eight
Mr. Paperback
to Minor

6/4/79 97 \$ 44,900 \$29,519 Nine
Dowling to
Minor

The calculations are illustrated in exhibits which are attached.

A27

YELLOW FREIGHT
PROBILL #111-477501
(COUNT TWO)

Matrix # and Title	Fraction Copyrighted	Number of Boxes	Number of Records	Divide by 2 if Double LP Set	Price	Fractional Value	Whole Value
Pittsburg New Year's Eve (HNY-76-77)	12/37	X	35	X	50	÷ 2	X 12.98 = \$ 3,634 \$11,357
Elvis Hawaiian Benefit (GA-200)	9/15	x	52	X	50	÷ 2	X 10.98 = 8,564 14,274
Dorsey Shows (GA-100)	8/12	X	64	X	50	÷ 1	X 8.98 = 19,253 28,736
Burbank Session (AFNS 62768)	11/38	X	80	X	50	÷ 2	X 12.98 = 7,528 25,960
Burbank Session II (AFNS 62968)	24/35	X	125	X	50	÷ 2	X 12.98 = 27,988 40,562

(continued on next page)

(continued from previous page)

Matrix # and Title	Fraction Copyrighted	Number of Boxes	Number of Records	Divide by 2 if Double LP Set	Price	Fractional Value	Whole Value
Got a Lotta Living to Do (PR101)	21/26	X	51	X	8.98 =	18,548	22,899
From the Waist Up (GA-150)	8/15	X	11	X	8.98 =	2,617	4,939
Rocking Rebel II (GA-300)	9/10	X	12	X	9.98 =	5,389	5,988
68' Comeback	12/16	X	5	X	8.98 =	1,683	2,245
					Fractional Value	= \$ 95,204	
					Whole Retail Value	= \$156,960	

A28

YELLOW FREIGHT
PROBILL #111-485917
(COUNT THREE)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
Rockin Rebel (GA-250)	5/11	X	4025	X 9.98 =	\$ 18,076
				Fractional Value =	\$ 18,076
				Whole Value =	\$ 40,169

YELLOW FREIGHT
PROBILL #111-488237
(COUNT FOUR)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
Behind Closed Doors (AFNS-66072-4)	39/49	x	2041	X 25.98 =	\$ 42,420
Command Performance (ECP-101)	8/18	X	1200	X 8.98 =	4,741
				Fractional Value =	\$ 47,161
				Whole Value =	\$ 63,801

A29

YELLOW FREIGHT
PROBILL #111-489972
(COUNT FIVE)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
Behind Closed Doors (AFNS-66072-4)	39/49	X 3000	X 25.98 =	\$ 62,352	\$77,940
			Fractional Value =	\$ 62,352	
			Whole Value =	\$ 77,940	

YELLOW FREIGHT
PROBILL #507591
(COUNT SIX)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
From The Waist Up (GA-150)	8/15	X 1670	X 8.98 =	7,948	\$14,996
Dorsey Shows (GA-100)	8/12	X 56	X 8.98 =	336	502
Command Performance (ECP-101)	8/18	X 276	X 8.98 =	1,090	2,470
Got a Lotta Livin to Do (PR-101)	21/26	X 549	X 8.98 =	3,993	4,930
68 Comeback (MKS-101)	12/16	X 1446	X 8.98 =	9,738	12,985
Legend Lives On (PCS-1001)	9/13	X 1314	X 8.98 =	8,141	11,799
			Fractional Value =	\$ 31,246	
			Whole Value =	\$ 47,682	

MC LEAN TRUCKING
PROBILL #170-1187305
(COUNT SEVEN)

Matrix # and Title	Fraction Copyrighted	Number Records	Price	Fractional Value	Whole Value
Rockin Rebel III (GA-350)	9/13	X 4668	X 9.98 =	32,144	\$46,586
Leavin' It Up to You (AFNS-66173)	10/12	X 4688	X 9.98 =	38,832	46,786
			Fractional Value =	\$ 70,976	
			Whole Value =	\$ 93,372	

A32

YELLOW FREIGHT
PROBILL #111-541345
(COUNT EIGHT)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
Rockin Rebel III (GA-350)	9/13	X 5000	X 9.98 =	34,431	\$49,900
Leavin It Up to You (AFNS-66173)	10/12	X 5000	X 9.98 =	41,417	49,900
			Fractional Value =	\$ 75,848	
			Whole Value =	\$ 99,800	

YELLOW FREIGHT
PROBILL #111-507584
(COUNT NINE)

Matrix # and Title	Fraction Copyrighted	Number of Records	Price	Fractional Value	Whole Value
Dorsey Shows (GA-100)	8/12	X 1000	X 8.98 =	6,016	\$8,980
Got a Lot of Livin' to Do (PR-101)	21/26	X 1000	X 8.98 =	7,273	8,980
From the Waist Up (GA-150)	8/15	X 750	X 8.98 =	3,569	6,735
The 68' Comeback (MK-101)	12/16	X 750	X 8.98 =	5,051	6,735
The Legend Lives On (PCS-1001)	9/13	X 750	X 8.98 =	4,647	6,735
Command Performance	8/18	X 750	X 8.98 =	2,963	6,735
			Fractional Value =	\$ 29,519	
			Whole Value =	\$ 44,900	

A33

**(D) STIPULATION REGARDING TESTIMONY
OF JERRY GREENFIELD**

IT IS STIPULATED that Jerry Greenfield was called as a witness by the government and testified as follows:

Jerry Greenfield is general manager and custodian of records of the Radio Recorders division of the EMC Corporation. During the period 1964 through 1978, he managed the Radio Recorders Studios in Hollywood.

Elvis Presley made sound track recordings for most of his motion pictures at Radio Recorders. Radio Recorders was not authorized to release the master recordings or the outtakes that were produced in Presley's recording sessions except to its clients, the motion picture studios. All tapes were supposed to be delivered to the clients without copying and Radio Recorders was not authorized to make or release extra copies.

**(E) STIPULATION REGARDING TESTIMONY
OF JOHN HERMAN**

IT IS STIPULATED AND AGREED that John Herman was called as a witness by the government and testified as follows:

1. Herman is a policeman in Uniontown, Pennsylvania.
2. Herman is an Elvis Presley fan and, prior to Presley's death, attended several of his concerts. Herman frequently took pictures of Presley during the concerts and recorded the concerts for his personal use.
3. On New Year's Eve, 1976, Herman attended an Elvis Presley concert in Pittsburgh, Pennsylvania. Herman sat close to the front and took pictures of Presley while his father, who was sitting next to him, made a tape recording of the concert.

4. After the concert, Herman lent his tape recording and copies of his pictures to Paul Dowling. (Herman had previously corresponded with Dowling regarding Elvis Presley concerts and records).

5. In January, 1977, after he had sent the pictures and tapes to Dowling, Herman received a telephone call from William Samuel Theaker. Theaker asked Herman if he could borrow his negatives for the Pittsburgh New Year's Eve concert and told Herman that he wanted to hear the tapes. Herman responded that Dowling had the material but that he (Herman) did not want it copied.

6. Shortly after this conversation, Herman talked to Dowling on the telephone and learned that Dowling had sent the pictures and tapes to Theaker in California. Several months later, Herman received a Vic Colonna flyer in the mail advertising the album, "Rockin' With Elvis, Pittsburgh New Year's Eve." After receiving the flyer, Herman ordered the album and received a copy in the mail from Vic Colonna.

7. Several of the pictures on the album were identical to the ones Herman had lent Dowling and Theaker. In addition, when Herman listened to the album, he realized that his tape had been used as a source, because he could hear his parents voices.

8. After receiving the album, Herman telephoned Theaker in California and objected to the use of his pictures and tape to manufacture the album. Theaker responded that there was nothing wrong with using the pictures. With regard to the tape, Theaker told Herman that he had received a better tape from someone else and that, in any event, Herman should not worry because there was no way anybody would know that Herman had any connection with the album.

9. Plaintiff's Exhibit 742 is a chart on which two of the pictures Herman lent Dowling and Theaker are mounted on the right, and on which the front and back covers of the "Rockin' With Elvis Pittsburgh New Year's Eve" album are mounted on the left. The Herman pictures and the album cover pictures are identical.

10. Herman would not have allowed Dowling and Theaker to use his tape and pictures if he had known that they would use them in making a record.

**(F) STIPULATION REGARDING TESTIMONY
OF ALAN KRESS**

IT IS STIPULATED AND AGREED that Alan Kress was called as a witness by the government and testified as follows:

Alan Kress is Director, Talent Affairs of RCA Records, a Division of RCA Corporation ("RCA"). In that capacity, Kress is a custodian of records of RCA's records regarding artist agreements, licenses and licensing requests, including artist contracts which RCA has acquired. He is familiar with the catalogue of authorized Elvis Presley recordings and is familiar with industry practice regarding copyright and clearing house notices. From 1974 through 1979, Kress was counsel, RCA Records and was one of the attorneys responsible for Elvis Presley. Kress is trained in copyright law and has testified as an expert witness in federal and state courts.

By contract dated July 26, 1954 between Elvis Aron Presley and Sun Record Company, Inc. ("SUN"), Sun acquired the exclusive right to manufacture and distribute sound recordings containing Elvis Presley vocal performances.

By contract dated November 15, 1955 between Elvis Presley and RCA, RCA acquired the exclusive right to

manufacture and distribute sound recordings containing Elvis Presley vocal performances which were made after that date. Approximately one week later, on November 21, 1955 RCA acquired SUN's rights under its July 26, 1954 contract with Presley and acquired exclusive rights to all Presley vocal performances that SUN had recorded, whether or not the recordings had been released.

By virtue of these contracts, RCA obtained the exclusive right to manufacture and distribute Elvis Presley sound recordings made after July 26, 1954, the date of the original SUN contract.

In 1956 and 1973 RCA's exclusive recording contract with Presley was extended, and that exclusive right remains in effect at the present time.

Elvis Presley died in August, 1977. Under the terms of a March 4, 1973 contract, Presley's estate is entitled to receive royalties, through RCA, on all Presley recordings made after March 1, 1973.

Record manufacturers such as RCA Records, are required under the Copyright Acts of 1909 and 1976 to obtain mechanical licenses and to pay royalties to songwriters and publishing companies for records that manufacturers press which contain performances of copyright musical compositions belonging to the songwriters or publishing companies.

Persons and institutions (such as radio stations) which perform copyrighted musical compositions and sound recordings publicly are required to pay performance royalties to the copyright proprietors (songwriters and publishing companies). ASCAP and BMI are the two largest clearinghouses for receipt and distribution of performance royalties. It is RCA Records' practice and the custom in the industry to print the names of the appropriate clearinghouses on record jackets or labels in

order to notify radio stations and other performers where performance royalties are to be sent.

RCA Records has never authorized Paul Dowling, William Samuel Theaker, Vic Colonna, or William Richard Minor to manufacture Elvis Presley phonograph records, and no one has ever been authorized by RCA to manufacture or distribute the albums listed in the Aca Anderson stipulation at pp. 16 - 18.

RCA maintains all its Elvis Presley mastertapes including rehearsals and outtakes in secured premises and the release of the mastertapes has never been authorized, except for purposes of manufacturing and releasing authorized sound recordings and audio visual works.

On April 22, 1976, Kress sent Paul Dowling a letter (plaintiff's Exhibit 708), regarding "The '68 Comeback," "Good Rockin' Tonight," "Hillbilly Cat," "King Goes Wild," and "T.V. Guide Presents Elvis."

On August 11, 1976, Kress sent Vic Colonna at P.O. Box 29185, Los Angeles, California, a letter (plaintiff's Exhibit 709) regarding RCA's rights in Elvis Presley and the album "The Elvis Presley Dorsey Shows."

The letters advised Colonna and Dowling that manufacture and sale of the records infringed RCA and Elvis Presley's rights.

(G) STIPULATION REGARDING TESTIMONY OF HERBERT NUSBAUM

Herbert Nusbaum is attorney and custodian of records of Metro-Goldwyn-Mayer, Inc. ("MGM").

In 1963 MGM produced the motion picture *Viva Las Vegas*, starring Elvis Presley and Ann Margaret. MGM copyrighted the motion picture in conjunction with Jack Cumming's Productions, Inc. Plaintiff's Exhibit 681 is a certified copy of the copyright certificate.

MGM administers the *Viva Las Vegas* copyright and has never authorized anyone to issue a record album utilizing part or all of the *Viva Las Vegas* soundtrack.

Nusbaum has examined and listened to the album *Viva Las Vegas*, Plaintiff's Exhibit 215, and compared it to a print of the *Viva Las Vegas* motion picture. He concluded that bands 2-10 on side one and 2 through 6 on side two of the album were made by copying the soundtrack. Sound effects and background noises from the motion picture can be heard on these bands.

Elvis Presley recorded the songs on *Viva Las Vegas* for MGM, including outtakes, at the Radio Recorders Studio in Hollywood. No one at Radio Recorders or MGM was authorized to release the tapes, except to RCA Records. (RCA Records was never given tapes of songs in the movie which were performed by Ann Margaret.)

Nusbaum has also examined the album "Got A Lot O' Livin To Do," Plaintiff's Exhibit 233, and compared it to the MGM copyrighted motion picture *Jailhouse Rock*. Side one, bands 1(a) through (h), on the album were made by copying the *Jailhouse Rock* soundtrack. MGM never authorized anyone other than RCA Records to release record albums using the soundtrack. The "Got A Lot O' Livin To Do" album is unauthorized.

(H) STIPULATION REGARDING TESTIMONY OF JIM PROFETTA

IT IS STIPULATED AND AGREED that Jim Profetta was called as a witness by the government and testified as follows:

1. Jim Profetta is a dispatcher and custodian of records at Yellow Freight System, Inc. ("Yellow Freight") a trucking company located in the Los Angeles area in Sun Valley.

2. Yellow Freight provides shippers with blank bills of lading, which must be filled out by the shipper before Yellow Freight picks up the load.

3. Plaintiff's Exhibits 93 through 100 each contain a bill of lading and an attached delivery slip. In each case, the typed information in blue ink on the bills of lading was completed by the shipper. The remaining notations were placed on the bills of lading by Yellow Freight.

4. Plaintiff's Exhibit No. 93 indicates that on January 12, 1979, Paul Dowling, P.O. Box 4213, in Glendale, California shipped 503 cartons of records to Gloria Anderson, 817 Patapsco Avenue in Baltimore, Maryland and that the load was delivered on January 24, 1979 in Baltimore to Ace Anderson. At the time of delivery Anderson claimed that 15 cartons had been crushed and that 10 were wet and smashed. Plaintiff's Exhibit 240 is a Yellow Freight System, Inc. standard form for presentation of loss and damage claims that Ace Anderson submitted to Yellow Freight in order to be compensated for the damaged cartons. Plaintiff's Exhibits Nos. 238 and 239 are invoices Anderson submitted in support of the claim, in which he stated that the shipment consisted of 35 boxes of HNY-76-77, 52 boxes of GA-200, 64 boxes of GA-100, 80 boxes of LR-711, 80 boxes of AFNS-62768, 125 boxes of AFNS-62968, 51 boxes of PR-101, 11 boxes of GA-150, 12 boxes of GA-300 and 5 boxes of MK-101.

5. Plaintiff's Exhibit No. 94 indicates that on February 21, 1979 Paul Dowling, P.O. Box 4213 in Glendale, California shipped 115 cartons of records consisting of 4,025 copies of GA-250 to Gloria Anderson at 817 Patapsco Avenue in Baltimore, Maryland and that delivery was made to Ace Anderson on March 12, 1979 in Baltimore, Maryland.

6. Plaintiff's Exhibit No. 95 indicates that on March 2, 1979, Paul Dowling, P.O. Box 4213 in Glendale, California shipped 211 cartons of records consisting of 2,041 copies of 66072/4 and 1,200 copies of ECP-101 to Gloria Anderson at 817 Patapsco Avenue in Baltimore, Maryland and that on March 12, 1979 delivery was made to Ace Anderson in Baltimore.

7. Plaintiff's Exhibit No. 96 indicates that on March 14, 1979 Paul Dowling, P.O. Box 4213 in Glendale, California shipped 250 cartons of records consisting of 3,000 copies of 66072-4 to Gloria Anderson, 817 Patapsco Avenue in Baltimore, Maryland, and that on March 23, 1979 delivery was made to Ace Anderson in Baltimore.

8. Plaintiff's Exhibit No. 97 indicates that on June 4, 1979 Paul Dowling, P.O. Box 4213 in Glendale, California shipped 115 cartons of records consisting of 1,000 copies of GA-100, 1,000 copies of PR-101, 750 copies of GA-150, 750 copies of MKS-101, 750 copies of PCS-1001 and 750 copies ECP-101 to Richard Minor at 9415 S.W. 42nd Street in Miami, Florida and that delivery was made on approximately June 9, 1979 in Miami to W.J. Minor.

9. Plaintiff's Exhibit No. 98 indicates that on June 4, 1979 Paul Dowling, P.O. Box 4213 in Glendale, California shipped 129 cartons of records consisting of 1,670 copies of GA-150, 56 copies of GA-100, 549 copies of PR-101, 1,314 copies PCS-1001, 276 copies of ECP-101 and 1,446 copies of MKS-101 to Gloria Anderson at 817 Patapsco, in Baltimore, Maryland, and that delivery was made in Baltimore to Ace Anderson on June 18, 1979.

10. Plaintiff's Exhibit No. 99 indicates that on November 8, 1979 Mr. Paperback at 234 N. Brand in Glendale, California shipped 200 cartons of records consisting of

5,000 copies of GA-350 and 5,000 copies of AFNS-66173 to Richard Minor at 9415 S.W. 42nd Street in Miami, Florida and that delivery was made in Miami to Edna Minor on November 20, 1979.

11. Plaintiff's Exhibit No. 100 indicates that on December 10, 1979 Mr. Paperback at 234 N. Brand Boulevard in Glendale, California shipped 79 cartons of records to Gloria Anderson at 817 Patapsco, in Baltimore, Maryland and that delivery was made on December 31, 1979.

12. Plaintiff's Exhibits No. 769 through 774 are city pick-up/delivery manifest and mileage records which indicate where in the Los Angeles area Yellow Freight picked up the shipments referred to above. These records indicate that the January 12, 1979 records shipment was picked up at a "Records-Tempo" in Burbank, and that the remaining record album shipments were picked up at the H. V. Waddell Company in Burbank.

**(I) STIPULATION REGARDING TESTIMONY
OF DONALD ZACHARY**

It is stipulated and agreed that Donald Zachary was called as a witness by the government and testified as follows:

Zachary is an Attorney and Custodian of Records at NBC in Burbank, California. He is familiar with NBC's records regarding its production of the Elvis Presley Television Special in 1968, the "Aloha From Hawaii" Presley special in 1973 and the "Our Memories of Elvis" special in 1977. He is also familiar with NBC's procedures for storing and maintaining security of the tapes that were made (including outtakes) for these shows.

On June 27, 28, 29 and 30, 1968, NBC taped four Presley concerts at its Burbank, California studios for a December 3, 1968 Presley television special.

On January 13, 1973, NBC taped Elvis Presley's rehearsal concert for the "Aloha From Hawaii" special that was first broadcasted in the United States on April 4, 1973.

The tapes of the 1968 concerts and the Aloha Rehearsal Show were stored in NBC's vault. No one at NBC was authorized to release them publicly and NBC has never authorized anyone to manufacture records utilizing these tapes.

After Elvis Presley's death, NBC produced a retrospective television special entitled "Our Memories of Elvis." In order to assemble the show, it was necessary for NBC editors to be allowed access to the 1968 and 1973 Presley tapes. However the editors were not authorized to make copies of the tapes for their own or non-NBC use.

On September 6, 1978, the tapes were sold to Sarnoff International, on behalf of Presley's manager Colonel Parker.

**(J) STIPULATION REGARDING TESTIMONY
OF HARVEY ZIMMERMAN**

IT IS STIPULATED AND AGREED that Harvey Zimmerman was called as a witness by the government and testified as follows:

Harvey Zimmerman is a song writer who lives in New Jersey. As a song writer, he uses the professional name Bill Giant.

For approximately 20 years Zimmerman has been a member of a song writing team with two friends, Berney Baum and Florence Kaye. The Giant/Baum/Kaye song writing team wrote approximately 43 songs that were recorded and released by Elvis Presley.

One of the songs Zimmerman wrote for Elvis Presley was entitled "Plantation Rock." In 1962 or 1963 Presley

recorded the song on an acetate reference stub ("acetate") in the studio, but the song was never released publicly. Acetate reference stubs were used by musicians, record producers as song writers as an inexpensive means of making test or sample recordings before tape recorders were commonly available. The acetates could be played like records, but would wear down after a few playings.

Originally, Plantation Rock was to be included in one of Elvis movies, "Girls, Girls, Girls." When the decision was made not to include the song in the movie, Elvis' publisher, Freddie Benstock gave Zimmerman the acetate Elvis had recorded.

In 1979, Zimmerman saw an advertisement, Plaintiff's Exhibit 778, in which Paul Dowling offered to buy various type of Elvis Presley material, including "Unreleased songs on Sun or RCA" and "tapes and films of live shows in the 50's; Louisiana Hay Ride; . . . Dorsey shows . . . , Hawaii Benefit Show; etc."

In response to the add, in April 1979, Zimmerman called Dowling on the telephone and introduced himself. After a few minutes, Dowling conferenced in Ace Anderson on the call and Zimmerman, Anderson and Dowling had a lengthy discussion regarding Zimmerman's songs and various types of Presley memorabilia, including the acetate Zimmerman owned.

A few days after the telephone call, defendant Dowling and Anderson met with Zimmerman and Berney Baum at Zimmerman's New Jersey home. Zimmerman and Baum agreed to sell the Plantation Rock acetate to Dowling for Dowling's collection, for \$3,000. Dowling told Zimmerman that he was going to listen to the acetate once and then hang it on his wall with special lighting.

In April, 1979 Zimmerman, Baum and Kaye copyrighted Plantation Rock. Plaintiff's Exhibit 868 is a copy of the

copyright registration and Plaintiff's Exhibit 869 is a copy of the lead sheet, or unpublished sheet music which was deposited with the Library of Congress copyright office.

In September or October, 1980 Zimmerman saw a Vic Colonna catalog with the return address, P.O. Box 4158 in Glendale, California. Inside the catalog, there was an advertisement for the album "Plantation Rock", featuring "Plantation Rock, the Giant-Baum-Kaye song originally intended for the movie Girls! Girls! Girls! . . ." Plaintiff's Exhibit 779 is a copy of the catalog advertisement.

After seeing the add, Zimmerman obtained a copy of the Plantation Rock album and had his attorney write demand letters to Vic Colonna and Audifon at Vic Colonna's Glendale Post Office Box advising Colonna and Audifon that the record constituted an infringement of the "Plantation Rock" copyright. Plaintiff's Exhibit 65 and 66 are copies of the letters to Colonna and Audifon.

Colonna and Audifon did not respond to the letters.

Zimmerman made tape recording of the Plantation Rock acetate before selling it to Dowling. He has compared the Plantation Rock song on the Plantation Rock album, (Plaintiff's Exhibit 229) to the tape and has determined that the record was made by using the acetate or a tape of it.

Zimmerman and his partners had never authorized anyone to press or release a Plantation Rock album, and they have not received any royalties from its sale or manufacture. (On the copyright certificate for Plantation Rock, Zimmerman listed the name Bill Giant and his New Jersey address as the name and address to which correspondence regarding the copyright was to be sent. He is the partner responsible for approving licenses and royalties).

Zimmerman would not have sold Dowling and Anderson the acetate if he had known they were planning to use it to make a record.

(K) STIPULATION REGARDING TESTIMONY OF THRONE NOGAR

IT IS STIPULATED that Thorne Nogar was called as a witness by the government and testified as follows:

Thorne Nogar is a Sound Engineer who worked at Radio Recorders and the Radio Recorders Annex (now known as the Annex Studios, which Nogar owns) since 1950.

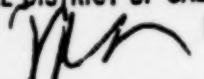
Elvis Presley made sound track recordings for most of his motion pictures at Radio Recorders and the Radio Recorders Annex, and Nogar participated in making the recordings. Radio Recorders was not authorized to release the master recordings or the outtakes that were produced in Presley's recording sessions except to its clients, the motion picture studios. All tapes were supposed to be returned to the clients.

(L) PAUL DOWLING

[The testimony of Paul Dowling on direct examination is set forth in the Record of Transcript at pages 87-112; The testimony of Paul Dowling on cross-examination is set forth in the Record of Transcript at pages 112-131.]

**IV
FINDINGS AND ORDER**

(A) COURT UNITED STATES DISTRICT FILED

UNITED STATES DISTRICT COURT	MAY 11 1983
CENTRAL DISTRICT OF CALIFORNIA	CLERK, U. S. DISTRICT COURT
UNITED STATES OF AMERICA,	CY  CENTRAL DISTRICT OF CALIFORNIA
Plaintiff,	DEPUTY
VS.	NO. CR 82-
PAUL DOWLING, et al.,	1005(B)-LTL
Defendants.	GENERAL FINDING
	AND
	ORDER

This matter is here for decision after trial to the Court without a jury and submission on May 5, 1983.

The Court finds the defendant Paul Edmond Dowling guilty as charged in Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 25, 26 and 27, and each of them.

Let judgment be entered accordingly.

It is ordered that the Federal Probation Service prepare a pre-sentence report with respect to defendant.

Sentencing is set for June 7, 1983 at 1:30 p.m. The defendant is ordered to appear for sentencing on June 7, 1983.

The Clerk of the Court will serve copies of this General Finding and Order by United States mail upon defendant and counsel of record.

DATED: This 11 day of May, 1983.

Lawrence T. Lydick
United States District Judge

**(B) OPINION OF THE COURT OF APPEALS
FOR THE NINTH CIRCUIT**

[The full text of the Opinion is set forth in Petitioner's
Supplemental Appendix]

**V.
JUDGMENT AND COMMITMENT ORDER**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Defendant: PAUL DOWLING

Docket No. CR 82-1005-R
June 13, 1983

JUDGMENT AND PROBATION/COMMITMENT ORDER

With Counsel Michael Abzug, Retained

PLEA: Not Guilty

FINDING & JUDGMENT

There being a finding of: Guilty.

Defendant has been convicted as charged of the offense(s) of conspiracy, copyright infringement and mail fraud, in violation of 18, U.S.C., § 371, as charged in count one; interstate transportation of stolen property, in violation of Title 18, U.S.C., § 2314, as charged in counts two, three, four, five, six, seven, eight, nine, ten, eleven & twenty-seven; copyright infringement, in violation of Title 17, U.S.C., § 506(a), as charged in counts twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, twenty-five and twenty-six of the First Superseding Indictment.

SENTENCE OR PROBATION ORDER

The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

four (4) years on count one; four (4) years on counts 2, 3, 4, 5, 6, 7, 8 & 9 and a fine of \$5,000; one (1) year on counts 10, 11, 12, 13, 14, 15, 16, 17 & 18 and four (4) years on counts 25, 26 & 27.

(continued on next page)

(continued from previous page)

IT IS FURTHER ADJUDGED as to count 1, the jail-type sentence is suspended; count 2 the jail-type sentence only is suspended; counts 3-9 the jail-type sentence and fine are suspended and on counts 11-18 the jail-type sentence is suspended and the defendant is placed on probation for a period of five years on the conditions that he obey all federal, state and local laws; comply with all rules and regulations of the probation officer; keep and maintain the orders of the Court with respect to the jail-type sentence imposed; devote 1,500 hours to a charitable organization as approved by the probation officer and shall report to this Court in person once every one hundred and twenty days as arranged by the probation officer.

IT IS FURTHER ADJUDGED as to counts 25, 26 & 27, pursuant to 18, U.S.C., § 3651, the defendant shall be confined in a jail-type institution for the first six (6) months; the balance of the sentence is suspended under the same terms and conditions as counts 1-9.

IT IS FURTHER ADJUDGED that the sentence on counts 2-9 shall run concurrently and not consecutively to the sentence on count 1.

IT IS FURTHER ADJUDGED that the sentence on counts 10-18 shall run consecutively and not concurrently to the sentence on counts 25, 26 & 27.

COMMITMENT RECOMMENDATION

IT IS ORDERED that the sentence is stayed until July 11, 1983, 12 Noon, at which time the defendant is to surrender to the designated institution or in default thereof to the office of the United States Marshal at Los Angeles, California.

It is the intention of this judgment that the defendant serve 18 months in a jail-type institution and pay a fine in the amount of \$5,000.

Signed by: U.S. District Judge Manuel L. Real

Date: 6/13/83

VI
NOTICE OF APPEAL FILED

MICHAEL D. ABZUG
1900 Ave of the Stars
Suite 2512
Los Angeles, CA 90067
(213) 278-4984

JUN 21 12 40 PM '83
CLERK OF COURT
CENTRAL DISTRICT OF CALIF.
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	CASE NUMBER
)	
Plaintiff)	CR 82-1005(B)-R
)	
VS)	
PAUL EDMOND DOWLING)	NOTICE OF APPEAL
)	
Defendant)	

PAUL EDMOND DOWLING hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered herein June 13, 1983 in the above-entitled action sentencing Defendant.

Dated: June 20, 1983 . _____
Attorney for Defendant

(CERTIFICATE OF SERVICE OMITTED IN
PRINTING)